

Memo

TO:

Ben Reed, Hearing Examiner,

Board of Environmental Review

FROM:

Hillary Houle, Board Secretary

P.O. Box 200901

Helena, MT 59620-0901

DATE:

January 5, 2016

SUBJECT:

Board of Environmental Review Case No. BER 2016-01 PWS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF:

THE DENIAL FOR THE SILVERADO

HEIGHTS SUBDIVISION LOTS 1 AND 10

REWRITE, EQ # 16-1383, RAVALI

COUNTY, MONTANA

Case No. BER 2016-01 PWS

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Paul Nicol Legal Counsel Department of Environmental Quality P.O. Box 200901

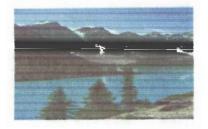
Helena, MT 59620-0901

Jon Dilliard, Bureau Chief Public Water and Subdivisions Bureau Department of Environmental Quality

P.O. Box 200901

Helena, MT 59620-0901

Attachments



Kammerer Environmental Consulting, LLC

Land Use—Wastewater System Design—Family Transfer Boundary Relocation and other Subdivision Exemptions

4035 Sunnyside Cemetery Rd. Stevensville, MT 59870 Phone (406) 777-5452 jean.kec@gmail.com

December 30, 2015

Dear Board Members:

Please accept this letter as an official request for a hearing regarding the denial letter from Ravalli County for the Silverado Heights Subdivision Lots 1 & 10 Rewrite, EQ # 16-1383 dated November 20, 2015. The facts that surround this request are the reason for the request and are succinctly stated below. However, I believe it is important to explain to the Board that it is the contention of our Clients that there is an issue with the Department's determination and definition of the word "facilities". Additionally, our Client's initial request for the Rewrite of the existing approval was to have all 10 lots of the subdivision allow for the same usage. We were informed by the contracted County reviewing agent for DEQ that that would not be possible based on a policy change that occurred some time between 8/1/08 and today.

We did not have a written, signed and dated copy of that policy and requested one from the County, as we felt that they should have a copy on file to present to consultants or the affected public upon request. We were told by the Director of the Ravalli County Environmental Health Office that he did not have a copy of that policy. We then requested on more than one occasion, a written, signed and dated copy of that policy from DEQ's subdivision review section and to date have not received a copy of that policy. We also requested both the County and DEQ to point out where, in Law, Rule or Circular, optional usage of a lot was not allowed, and have not had that restriction pointed out. Given the option, our Clients have said they would settle for the designation of "residential" if a copy of the policy can be produced.

Kammerer Environmental Consulting LLC. (KEC) feels it is essential for the Board to understand the history and circumstances of this case to truly be able to make a fair and just decision. Following are the facts leading up to our request for the Boards determination:

- 1) The Silverado Heights subdivision received its original C.O.S.A. on 10/24/05 with the assigned EQ# 06-1447. As is required this was approved under Title 76.4.101 through 76.4.131, MCA. All the facilities that were granted as part of that review process allowed that Lots 1 through 10 would be "used for one single-family dwelling, and,"
- 2) The facilities permitted to be constructed on each of the 10 lots, as well as the facilities necessary for the subdivision as a whole, were evaluated by both the County and DEQ Permitting and Compliance Division at that time for "Residential" usage and the associated environmental impacts.
- 3) In March of 2007 the Silverado Heights subdivision was reviewed again for a change in use from all 10 lots being designated as "one single-family dwelling and," to "Lots 2 through 9 shall be used for one single-family dwelling and, Lots 1 and 10 shall be used for light commercial or office buildings, and," this change in designation was approved under the same E.Q. #06-1447, and the C.O.S.A. has an approval date of 3/8/07. Upon this approval all the facilities on Lots 1 and 10 were, it would seem reasonably to assume, evaluated for any and all impacts associated with the commercial designation. It is significant at this time to point out that nothing on the lot layout was moved or changed in any way with the exceptions regarding the number of people per day that the facilities on Lots 1 and 10 could serve, and the restriction of "That the commercial buildings on lots 1 and 10 shall not exceed a total wastewater flow of 600 gallons, and," It is essential to note at this time that a volme of 600 gallons per day would be the equivalent of a nine (9) bedroom house.

4) In 2008 the owners of the Silverado Heights subdivision or their representatives again approached the County and DEQ with a proposal to Rewrite the previous 3/13/07 approval and change the usage designations for lots 2 through 9 to allow that lots 2 through 9 would be allowed to be used for "either one single family residence or one light commercial or office building, and,". Once again it is reasonable to assume that all due diligence was taken on the part of the County and DEQ in evaluating any potential impacts from this change in designation, in that a new C.O.S.A. was issued on 8/1/08 with the new EQ # 08-2711. Please note that once again, there is no difference in the lot layout at all. There is no difference in any facilities or lot size. However there are greater restrictions placed on lots 2 through 9 to comply with rules governing commercial facilities. Please note again, that there is no change in the lot layout.

This then, brings us to the reason for our plea to this Board. As is stated in the denial letter received by KEC on November 20, 2015 RE: EQ#16-1383 Silverado Heights sub Lots 1 & 10 Rewrite, "if you wish to appeal the Departments denial of certification, you may request a hearing before the Board of Environmental Review, pursuant to Section 76-4-126, MCA and the Montana Administrative procedures Act." KEC indeed does wish to appeal the determination of the County and the Department, in that Ravalli County is only refusing approval solely based on an opinion of the DEQ; and DEQ believes that our Clients desire to change the designation on lots 1 and 10 from commercial back to residential or allowing all ten lots to be designated the sam,e should require a complete re evaluation of both lots 1 and 10 under the standards that are in place today, which are changed from those of the previous approval.

It is our plea to the Board that:

- 1) Based on the appeal process outlined in the County's denial letter of 11/20/15 this Board is the proper avenue of appeal. KEC, in an effort to mitigate and arbitrate the issue, sought the help of DEQ and found that, in fact, it was DEQ that advised the County that, based on a policy change DEQ felt there would be a change in "facilities" and that a full review was required.
- 2) It was stated in an email received by KEC on 11/5/15 that we could not re-designate Lots 1 and 10 to read the same as Lots 2 through 9 because of a policy change at DEQ. KEC spoke with the Clients and they agreed to limit the C.O.S.A. to read "for one single family residence, and," however, that was not acceptable to DEQ in that they believe "facilities" and "use" are synonymous.
- 3) We would beg the Board to evaluate the definition of "facility" or "facilities" as they occur in an environmental context in law or rule and we believe you will see that "use", "usage" or even "source" are not interchangeable. An excellent example to us is the way "facilities" is described in A.R.M. 17.36.112 which specifically addresses the re-review of previously approved facilities. (A copy is enclosed with this document for your reference)

KEC is supplying the Board with copies of our email correspondence with both the County and DEQ in an effort to give you the clearest picture possible as to the lengths KEC has tried to mediate an acceptable solution to this issue, to no acceptable avail.

It is our firm and honest belief that this subdivision has been evaluated from three different perspectives and that Lots 1 and 10 have had the facilities as described in ARM 17.36.112 fully and totally evaluated for both commercial and residential usage and nothing is being asked for other than that which was previously approved in any one of the reviews of Silverado Heights subdivision.

To believe that designating Lots 1 and 10 back to residential from commercial would potentially cause a more significant environmental impact is not credible and we just cannot help but continue to point out that **nothing** with regard to lot size, water supply, wastewater disposal, solid waste disposal or stormwater drainage or the facilities that were previously evaluated have changed. We are simply asking for a re-designation of use, which is actually a return to the original C.O.S.A; nothing else.

KEC is aware that since 2008 there have been rule changes. These rule changes are appropriate in the evaluation of newly created lots and even in the case of a change in facilities, if required. None of that is the case here. We are totally dealing with the semantics of the issue.

Our Client has given us the responsibility to represent their grievance to the Board and is reluctant to be forced to expend greater funds than already required to bring back to approval that which was already previously approved. They feel that the letter of the law and rule were and are met to no greater impact to the water quality or dependability or to the Environmental quality of Ravalli County or the State of Montana as a whole, than that which was previously approved. They just want to change back the usage.

Kammerer Environmental Consulting has attempted to clarify the above issues by way of email correspondence with both the County and the Department to no avail and plead our Client's case to the Board for their consideration. We are including references that may be highlighted as a convenience.

With respect:

Kammerer Environmental Consulting LLC

- 17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES (1) This rule applies to "re-writes" of certificates of subdivision approval when no new subdivision is proposed. This rule identifies the procedures for re-reviewing facilities for water supply, storm water drainage, or sewage or solid waste disposal when the facilities have been previously approved under Title 76, chapter 4, MCA, and when:
- (a) parcel boundaries are not changing, but changes are proposed to the facilities that would deviate from the conditions of the previous approval;
- (b) parcel boundaries are not changing, but the previous approval has expired pursuant to ARM 17.36.314; or
- (c) parcel boundaries are changed by an aggregation with other parcels.
- (2) The owner of a parcel in (1) shall obtain approval from the reviewing authority as provided in this section.
- (3) The owner shall submit an application to the reviewing authority on a form approved by the department. Copies of the form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, http://deq.mt.gov/wqinfo/Sub/SubReviewForms.mcpx, or from the local reviewing authority.
- (4) The application must describe any proposed new facilities, any changes to previously approved facilities, and any new parcel boundaries. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.
- (5) The reviewing authority shall review the application pursuant to all applicable requirements, including fees, set out in ARM Title 17, chapter 36, subchapters 1, 3, 6, and 8. The application is subject to the rules in effect at the time the application is submitted, except that, if a requirement in the applicable rules would preclude a previously approved use of the parcel, the department may waive the requirement that would preclude the use. Waivers are subject to ARM 17.36.601.
- (6) Facilities previously approved under Title 76, chapter 4, MCA, are not subject to re-review, if they are not proposed to be changed and are not affected by a proposed change to another facility. To determine whether previously approved water and sewer facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, and evidence that the septic tank has been pumped in the previous three years.
- (7) Except as provided in (8), if the proposed amendments are approved, the reviewing authority shall issue a revised certificate of subdivision approval.
- (8) Amendments that consist solely of the relocation of previously approved facilities may be made through approval of a revised lot layout document. The approved revised lot layout document must be filed with the county clerk and recorder and a copy must be provided to the department.

From: Jean K [mailto:jean.kec@gmail.com] Sent: Tuesday, December 08, 2015 5:29 PM

To: Kingery, Barbara



Memo

TO:

Ben Reed, Hearing Examiner,

Board of Environmental Review

FROM:

Hillary Houle, Board Secretary

P.O. Box 200901

Helena, MT 59620-0901

DATE:

January 5, 2016

SUBJECT:

Board of Environmental Review Case No. BER 2016-02 PWS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: THE DENIAL FOR THE WIEDIGER FAMILY TRANSFER EQ # 16-1116, RAVALI COUNTY, MONTANA.

Case No. BER 2016-02 PWS

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Paul Nicol Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901 Jon Dilliard, Bureau Chief Public Water and Subdivisions Bureau Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901

Attachments



Kammerer Environmental Consulting, LLC

Land Use—Wastewater System Design—Family Transfer Boundary Relocation and other Subdivision Exemptions

4035 Sunnyside Cemetery Rd. Stevensville, MT 59870

Phone (406) 777-5452 jean.kec@gmail.com

December 29, 2015

Dear Board members:

Please accept this letter as an official request for a hearing regarding the denial letter from Ravalli County for the Wiediger Family Transfer, EQ#-1116 dated September 1, 2014 which was incorrect as it was sent in 2015. The facts that surround this request are the reason for the request and are succinctly stated below. However, I believe it is important to explain to the Board that it is not a contention of our client Mr. Wiediger that there is an issue over the Department's responsibility to evaluate the proposed family transfer for the parcel subject to review, but rather, the denial of the County's representative and subsequently the Department's refusal to grant an exemption for a parcel (Parcel 1B) that very clearly qualifies for the use of this exemption based on the clear reading of A.R.M. 17.36.605 (2) (b).

The Rule clearly and specifically states that "(b) a parcel that has a previous approval issued under Title 76, chapter 4, part 1, MCA, if:

- (i) no facilities other than those previously approved exist or will be constructed on the parcel; and
- (ii) (ii) the division of land will not cause approved facilities to deviate from the conditions of approval, in violation of 76-4-130, MCA;"

In addressing the accurate and succinct wording of 17.36.605 (2) (b), we would claim the following:

- 1) The prior approval that would govern Parcel B is based on prior approval E.Q. # 01-2398 which was approved under Title 76.4.101 through 76.4.131, MCA and is dated July 3, 2001 and appropriately signed by the County and the Department. All the facilities that were granted as part of that review process are allowable based on that C.O.S.P.A.
- 2) No new facilities are proposed, needed or will be constructed on proposed Parcel 1B other than those previously approved.
- 3) The division of land will not cause the approved facilities to deviate from the conditions of the approval E.Q. # 01-2398, and consequently there is no violation of 76.4.130 MCA, which clearly states "A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

The facilities that were previously approved by C.O.S.P.A. were not and have not been deviated from, thus there is no violation of either the approval E.Q. # 01-2398, or 76.4.130 MCA.

Our Client has given us the responsibility to represent his grievance to the Board and is reluctant to be forced to expend greater funds than already required to plan for the future and benefit of his immediate family members when he feels that the letter of the law and rule are met in the request to utilize the exemption.

Kammerer Environmental Consulting has attempted to clarify the above issues by way of email correspondence with both the County and the Department to no avail and plead our Client's case to the Board for their consideration.

With respect:

Kammerer Environmental Consulting LLC for Daniel Wiediger

STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY CERTIFICATE OF SUBDIVISION PLAT APPROVAL (Section 76-4-101 through 76-4-131, MCA 1995)

To: County Clerk and Recorder

E.O. # 01-2398

Ravalli County Hamilton, Montana

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as: Wiediger Redesignation

FOR LEGAL DESCRIPTION, SEE ATTACHED "EXHIBIT A"

consisting of 1 parcel have been reviewed by personnel of the Permitting and Compliance Division, and,

THAT the documents and data required by ARM Chapter 17 Section 36 have been submitted and found to be in compliance therewith, and,

THAT approval of the Certificate of Survey is made with the understanding that the following conditions shall be met:

THAT the parcel size as indicated on the Certificate of Survey to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT Parcel B shall be used for two single-family dwellings, and,

THAT the individual water system on Parcel B will consist of a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT data provided indicates an acceptable water source at a depth of 250 to 300 feet, and,

THAT the individual sewage treatment system on Parcel B will consist of a septic tank and subsurface drainfield of such size and description as will comply with Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM, and,

THAT the newly proposed subsurface drainfield on Parcel B shall have an absorption area of sufficient size to provide 95 lineal feet per bedroom based on the soils encountered, and,

THAT plans and specifications for any proposed sewage treatment systems will be reviewed and approved by the county health department and will comply with local regulations and ARM, Title 17, Chapter 36, Subchapters 3 and 9, before construction is started.

Page 2 of 3 Ravalli County Wiediger Redesignation

EQ# 01-2398

THAT when the existing water supply system on Parcel B is in need of extensive repairs or replacement it shall be replaced by a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT when the present sewage treatment system on Parcel B is in need of extensive repairs or replacement it shall be replaced by a septic tank and subsurface drainfield of such size and description as will comply with Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM, and,

That the bottom of the drainfield shall be at least four feet above the water table, and,

THAT no sewage treatment system shall be constructed within 100 feet of the maximum highwater level of a 100-year flood of a stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any domestic water supply source, and,

THAT water supply systems, sewage treatment systems, and storm drainage systems will be located as shown on the approved plans, and,

THAT all sanitary facilities must be located as shown on the attached lot layout, and,

THAT the developer and/or owner shall provide each purchaser of property with a copy of the Certificate of Survey, approved location of water supply and sewage treatment system as shown on the attached lot layout, and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT departure from any criteria set forth in the approved plans and specifications and Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Environmental Quality.

Pursuant to Section 76-4-122(2)(a), MCA, a person must obtain approval of both the State under Title 76, Chapter 4, MCA, and local board of health under Section 50-2-116(1)(i) before filing a subdivision plat with the county clerk and recorder.

YOU ARE REQUESTED to record this certificate by attaching it to the Certificate of Survey of said subdivision filed in your office as required by law.

Page 3 of 3 Ravalli County Wiediger Redesignation

EQ# 01-2398

DATED this 3rd day of July, 2001.

Ravalli County Health Officer

By: Jake Kammerer, R.S.

Ravalli County Sanitarian's Office

Courthouse Box 5019 Hamilton, MT 59840

Owner's Name: Lena Wiediger

JAN SENSIBAUGH DIRECTOR

Theresa Blancevich, Supervisor

Subdivision Section

Permitting and Compliance Division Department of Environmental Quality

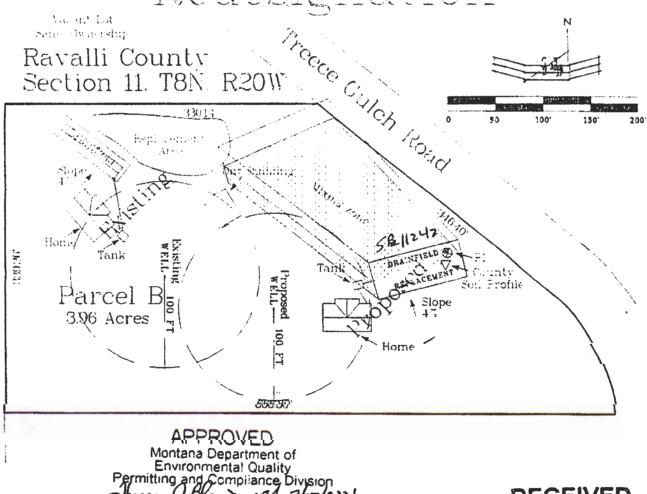
EXHIBIT "A"

PARCEL B

A parcel in the southwest one-quarter of the northwest one-quarter (SW1/4 NW1/4) of Section 11, Township 8 North. Range 20 West. PMM, Ravalli County, Montana, described as follows:

Commencing at the one-quarter corner common to Sections 10 and 11. Township 8 North, Range 20 West, PMM; thence, R.46 19'34"E., 933.84 feet to a point in the center of a sixty (60) foot access easement, and the point of beginning; thence, N.00"00'50"W., 329.26 feet along said easement centerline; thence, S.88'56'05"E. 330.14 feet to the center of a sixty (60) foot access thence, along said easement centerline, S.50 14'50"E. 346.40 feet and 136.63 feet along a curve to the right, having a radius of 209.90 feet to a non-tangent point; thence, N.88 54'20"W., 656.80 feet to the point of beginning. According to survey data and monuments as shown on the certificate of survey, and containing 3.96 acres more or less.

Weidiger Redesignation



RECEIVED

JUL 13 2001
MT. DEPT. OF ENV. QUALITY
PERMITTING & COMPLIANCE DIV.



John Palacio cjpalacio@rc.mt.gov>
To: Jean K cjean.kec@gmail.com>

Wed, Aug 26, 2015 at 3:50 PM

Hi Jean, please see my notes below regarding the Wiediger Family Transfer.

- Parcels 1A and 1B do not meet the exemptions they were applied for because:
 - a. Part of the drainfield for 1A is located on an easement on 1C
 - b. The well for 1B is located on an easement on 1A
 - c. Part of the mixing zone for 1B is located on 1A and 1C
- 2. The \$100 exemption fee will be refunded.
- 3. For the reasons listed on #1 above, Parcels 1A and 1B will have to be reviewed for the LOTS ONLY.
 - a. An additional \$250 (\$125/new lot) is needed to be submitted.
- 4. The facilities on Parcels 1A and 1B are previously reviewed and therefore will not need to be reviewed if they conditions of their original approvals have not been violated.
- 5. Since 3 lots are being reviewed, please submit a new application form that reflects 3 lots and the related information in relation to the 3 lots.
- 6. For the COS, please resubmitted a COS that:
 - Does not state that Parcels 1A and 1B are exempt, since the lots will be reviewed.
 - b. Show a mixing zone easement across Parcel 1C for the benefit of Parcel 1B.
- Submit the DNRC letter.
- Please submit a lot layout for all 3 lots with the required information shown.

John Palacio, RS

Ravalli County Environmental Health

215 S. 4th St., Suite D

Hamilton, MT 59840

Phone: (406)375-6568

Fax: (406)-375-6566



Jean K <jean.kec@gmail.com>
To: John Pałacio <jpalacio@rc.mt.gov>

Thu, Aug 27, 2015 at 6:57 PM

John, My response to your email of 8/26/15 regarding the allowable easements is as follows:

- [1.a.] The easement on 1A that extends into 1C does not contain any portion of the wastewater system. The easement is for the setback of 1A's drainfield only. Additionally, would you please point out what portion of the language cited regarding 76-4-125 (2) (e) (ii) mentions anything about easements or even if a portion of the system was on another lot.
- [1.b.] What condition of approval is violated by the existing well for Parcel 1B being located within an easement on Parcel 1A? The well was evaluated and approved. Parcel 1A and 1B were a single parcel at one time. All facilities were evaluated and would you please cite the rule that says that 17-36-605(2)(b) can't apply?
- [1.c.] Please cite the rule that requires existing (not proposed) mixing zones must remain entirely on the lot.
- [2.] Please retain the \$100 exemption fee until we resolve these differences of opinion.
- [3.] We will comply with this once the issues in 1 above are resolved.
- [4.] Theres no reason to believe that any condition of approval was violated. A permit was applied for and the system was installed and finaled under the inspection of a Ravalli County sanitarian.
- [5.] and [6.] and [8.] Again, we will remit a new application once the issues in 1 are resolved.
- [7.] We are working with Jim Nave of DNRC to address a change to the water right and will submit Jim's letter once the paperwork is finalized.

Thanks.

[Quoted text hidden]



Fri, Aug 28, 2015 at 11:33 AM

Hi Jean, please see my responses in blue, below.

John Palacio, RS

From: Jean K [mailto:jean.kec@gmail.com]
Sent: Thursday, August 27, 2015 6:58 PM
To: John Palacio <jpalacio@rc.mt.gov>
Subject: Re: Wiediger Family Transfer

John, My response to your email of 8/26/15 regarding the allowable easements is as follows:

- [1.a.] The easement on 1A that extends into 1C does not contain any portion of the wastewater system. The easement is for the setback of 1A's drainfield only. Additionally, would you please point out what portion of the language cited regarding 76-4-125 (2) (e) (ii) mentions anything about easements or even if a portion of the system was on another lot.
- JP The requirement for a lot review is an interpretation by DEQ. Please see attached email that is used by DEQ as part of the interpretation. If you have further questions about the usage of this exemption and its interpretation, please contact Barb Kingery with DEQ Subdivision Section, 406-444-5368.
- [1.b.] What condition of approval is violated by the existing well for Parcel 1B being located within an easement on Parcel 1A? The well was evaluated and approved. Parcel 1A and 1B were a single parcel at one time. All facilities were evaluated and would you please cite the rule that says that 17-36-605(2)(b) can't apply?
- JP The requirement for a lot review is an interpretation by DEQ. Please see attached email that is used by DEQ as part of the interpretation. If you have further questions about the usage of this exemption and its interpretation, please contact Barb Kingery with DEQ Subdivision Section, 406-444-5368.
- [1.c.] Please cite the rule that requires existing (not proposed) mixing zones must remain entirely on the lot.
- JP Regarding mixing zone easements, please clarify as to why there is a mixing zone easement across Parcel 1A for the benefit of Parcel 1B created by the Certificate of Survey.
- [2.] Please retain the \$100 exemption fee until we resolve these differences of opinion.

- b. The well for 1B is located on an easement on 1A
- c. Part of the mixing zone for 1B is located on 1A and 1C
- 2. The \$100 exemption fee will be refunded.
- 3. For the reasons listed on #1 above, Parcels 1A and 1B will have to be reviewed for the LOTS ONLY.
 - a. An additional \$250 (\$125/new lot) is needed to be submitted.
- 4. The facilities on Parcels 1A and 1B are previously reviewed and therefore will not need to be reviewed if they conditions of their original approvals have not been violated.
- 5. Since 3 lots are being reviewed, please submit a new application form that reflects 3 lots and the related information in relation to the 3 lots.
- 6. For the COS, please resubmitted a COS that:
 - Does not state that Parcels 1A and 1B are exempt, since the lots will be reviewed.
 - Show a mixing zone easement across Parcel 1C for the benefit of Parcel 1B.
- 7. Submit the DNRC letter.
- Please submit a lot layout for all 3 lots with the required information shown.

John Palacio, RS

Ravalli County Environmental Health

215 S. 4th St., Suite D

Hamilton, MT 59840

Phone: (406)375-6568

Fax: (406)-375-6566

Madden, Jim

From:

Madden, Jim

Sent:

Monday, November 01, 2004 5:12 PM

To:

Theresa Blazicevich'; Madden, Jim; Lazuk, Ray

Subject: RE: DEQ legal memo

Theresa and Ray:

I think that a rewrite is required in this case. I will do a followup legal memo on the question, but here is a summary:

A change (or elimination) of parcel boundaries that causes an approved facility to be appurtenant to a different parcel is a violation of a condition of approval. It is therefore not eligible for the exclusion in ARM 17.36.605(2)(b). The condition of approval is found in ARM 17.36.104, which requires that applications show, on a lot layout document, the boundaries of each lot and the location of proposed facilities on that lot. Associating a facility with a different parcel, either by relocating the facility or by moving the property lines, is a deviation from the approved lot layout document. A rewrite is required under Section 76-4-130, MCA, which prohibits construction or use of a facility that deviates from the certificate of approval.

In some cases the certificate of approval may specify that a lot is approved for one single-family system. In that case, a boundary change that results in a second system on that lot would also violate the "one system" limit in the approval.

The recent legal memo of September 29, 2004 stated that boundary adjustments that did not affect the conditions of approval of facilities did not warrant a rewrite. The September 29 memo is still valid. However, this is a case in which a boundary adjustment does affect the conditions of approval by, in effect, "moving" a facility onto a lot other than that shown on the lot layout. As mentioned in the September 29 memo, other cases affecting the conditions of approval include boundary adjustments that cause violations of setback distances or the lot size rule.

Jim

----Original Message----

From: Theresa Blazicevich [mailto:tblazicevich@co.ravalli.mt.us]

Sent: Wednesday, October 20, 2004 11:53 AM

To: Madden, Jim; rlazuk@state.mt.us

Subject: RE: DEQ legal memo

Jim and Ray,
A surveyor asked if the boundary relocation and ARM 17.36.605(2)(b)
exemption could be used if the existing subdivision was three lots and the
boundary relocation will result in two lots. The approval facilities for
the original two lots will not be affected but what happens with the
approved facilities for the third lot when it is eliminated.
Theresa



Jean K <jean.kec@gmail.com>
To: "Kingery, Barbara" <bkingery@mt.gov>, John Palacio <jpalacio@rc.mt.gov>

Fri, Aug 28, 2015 at 3:41 PM

Barb.

We have a situation where the owner of a parcel which was previously approved to allow for 2 single family dwellings, 2 wells and 2 wastewater systems, aggregated an additional 1 acre onto the property. It was then approved for a family transfer which resulted in a total of 3 parcels. (A,B & C)

Parcel A qualifies for the exemption in 76.4.125(2)(e)(ii) because of the specific language of that exemption.

Parcel C is subject to review in that it had no facilities on that parcel at any time.

Parcel B has an approved wastewater system and the previously approved well is in an easement on Parcel A. We feel that the exemption language of ARM 17.36.605(2)(b) is applicable in that no specific conditions of approval were specifically dedicated to Parcel B as Parcel B did not previously exist.

The approval which was written for the original parcel (call it Parcel 1), is not moot in that it was divided into Parcel A and B. Parcel C was the result of an aggregation and later a family transfer.

I have read Jim Madden's 11-1-2004 email to Theresa and Ray, but I do not see how our situation fits in with the one in that particular email, which has an aggregation which would put more than one single family dwelling on a lot, more than one well on a lot, and more than one wastewater system on a lot which had not been evaluated for an extra dwelling, well or wastewater system.

In our case, there was an approval for 2 single family dwellings, wells and wastewater systems on a single lot;now those facilities are divided. It is our contention that Parcel A is totally exempt as it qualifies for MCA 76.4.125(2)(e)(ii) and Parcel B would qualify for ARM 17.36.605(2)(b).

Your interpretation of the afforementioned is critical in a resolution of differences of interpretation between Ravalli County and ourselves. See attached email correspondence between John Palacio and myself. Thanks so much for your help. Jean Kammerer
[Quoted text hidden]



Ravalli County Environmental Health 215 South 4th Street – Suite D Hamilton, MT 59840 (406) 375-6565 FAX (406) 375-6566

September 1, 2014

Kammerer Environmental Consulting, LLC 4035 Sunnyside Rd. Stevensville, MT 59870

RE: Wiediger Family Transfer, EQ# 16-1116

Dear Mr. Kammerer:

The application for the above referenced subdivision was received by this office and reviewed in accordance with ARM Title 17, Chapter 36. This is to inform you that the subdivision application cannot be approved at this time. The Department is requesting additional information to demonstrate compliance with the Sanitation in Subdivisions Act (76-4-101, MCA) and regulations (ARM Title 17, Chapter 36).

Until the information required by law and regulation as specified in this letter is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction. Because the Department must make a decision to deny or approve your application within statutory deadlines, the Department hereby denies the application until the required information is submitted for review.

If you wish to appeal the Department's denial of certification, you may request a hearing before the Board of Environmental Review, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

When you submit the additional information for our review, please use the submittal title and EQ # noted above to ensure that the information is placed with your particular proposal.

If you have any questions on the above, please contact me at the address above or call me at (406) 375-6565 or you can fax the additional information to the fax number (406) 375-6566.

Sincerely,

John Palacio, RS

cc: DEQ, Subdivision Review Section Ravalli County Subdivision Files

Additional Information

- 1. Parcels 1A and 1B do not meet the exemptions they were applied for because:
 - a. Part of the drainfield for 1A is located on an easement on 1C
 - b. The well for 1B is located on an easement on 1A
 - c. Part of the mixing zone for 1B is located on 1A and 1C
- For the reasons listed on #1 above, Parcels 1A and 1B are required to be reviewed for the LOTS ONLY and an additional \$250 (\$125/new lot) is needed to be submitted per ARM 17.36.103(1)(a).
 - a. The facilities on Parcels 1A and 1B are previously reviewed and therefore will not need to be reviewed if the conditions of their original approvals have not been violated.
- A mixing zone easement across Parcel 1C for the benefit of Parcel 1B must be obtained per Ravalli County Subsurface Wastewater Treatment and Disposal Regulations Article 4, Section 4.2, C.
- 4. Since 3 lots are being reviewed, please submit a new application form that reflects 3 lots and the required information in relation to the 3 lots per ARM 17.36.102.
- 5. Please resubmitted a COS that addresses the following, per ARM 17.36.103:
 - a. Does not state that Parcels 1A and 1B are exempt, since the lots will be reviewed.
 - b. Show a mixing zone easement across Parcel 1C for the benefit of Parcel 1B.
- 6. Submit the DNRC approval letter per ARM 17.36.103.
- 7. Please submit a lot layout for all 3 lots with the required information shown per ARM 17.36.103(1)(d) and ARM 17.36.104.

Additional questions or comments may be required based upon the continued review of this file and the content of future submittal.



Kingery, Barbara <BKingery@mt.gov>
To: Jean K <jean.kec@gmail.com>
Co: John Palacio <ipalacio@rc.mt.gov>

Wed, Sep 30, 2015 at 4:34 PM

Jake.

John and I discussed this and although I do not have the file infront of me, generally speaking, I agree with John's interpretation. I have tried to add a few extra comments to your questions for clarification.

Please let me know if there are other questions.

Barb

From: Jean K [mailto:jean.kec@gmail.com]
Sent: Friday, August 28, 2015 3:41 PM
To: Kingery, Barbara; John Palacio
Subject: Re: Wiediger Family Transfer

Barb.

We have a situation where the owner of a parcel which was previously approved to allow for 2 single family dwellings, 2 wells and 2 wastewater systems, aggregated an additional 1 acre onto the property. It was then approved for a family transfer which resulted in a total of 3 parcels. (A,B & C) By previously approved I am going to guess this means a 76-4 MCA approval (COSA). Aggregations although exempt from Platting Act are not exempt from the Sanitation Act. This should have been reviewed by DEQ.

Parcel A qualifies for the exemption in 76.4.125(2)(e)(ii) because of the specific language of that exemption. Remainder lot exemption – I will assume all of the conditions of this exemption are met

Parcel C is subject to review in that it had no facilities on that parcel at any time. OK

Parcel B has an approved wastewater system and the previously approved well is in an easement on Parcel A. We feel that the exemption language of ARM 17.36.605(2)(b) is applicable in that no specific conditions of approval were specifically dedicated to Parcel B as Parcel B did not previously exist. The exemptions exist for those cases where no review is necessary. If I understand this scenario, the facilities for each structure are not on the same lot. Unless an easement was contemplated at the time of the original approval (which is was not

because we were on a single lot), the easement needs to be reviewed. We need to insure that all parties are in agreement and that the easement is in an acceptable format. The fact that you need an easement with corresponding review is a deviation from the original conditions of approval, is a violation of 76-4-130, MCA, and the ARM 17.36.605 (2)(b) exemption not appropriate.

The approval which was written for the original parcel (call it Parcel 1), is not moot in that it was divided into Parcel A and B. Parcel C was the result of an aggregation and later a family transfer. If there was a COSA on the lot, this may have also needed review at the time of Aggregation.

[Quoted text hidden]



Wiediger Family Transfer EQ# 16-1116

Jean K <jean.kec@gmail.com>
To: "Kingery, Barbara" <bkingery@mt.gov>
Cc: John Palacio <Jpalacio@rc.mt.gov>

Fri, Oct 2, 2015 at 9:44 AM

Barb.

Thank you for your September 30, 2015 email. I appreciate that you and John Palacio have discussed the project. However, I do believe that the interpretations may be incorrect. So I want to give some history that should shed more light on the facts of the situation.

On July 3, 2001, the Wiediger Redesignation was approved by MDEQ under EQ# 01-2398, which allowed for 2 single family dwellings, 2 wells, 2 drainfields and the review of the stormwater on a 3.9 acre Parcel B. Mr. Wiediger additionally owned an adjoining 1 acre parcel (Tract 6A) which had an agricultural covenant on it. The surveyor, Mr Wiediger, an KEC approached the planning dept. to ascertain the best, most economical, way to lift the ag covenant, and because it was Mr. Wiediger's intent to split the property for estate planning purposes, we were given the advice that by aggregating the parcels the ag covenant could be lifted and if Mr Wiediger proposed a family transfer, he could separate the parcel into 3 provided he had the dependents. This was done in one application process and not individual steps. Nothing has yet been filed for the aggregation. When the project is recorded, the aggregation will be recorded and immediately followed by the Family Transfer. Thus the aggregation was only a tool used for the removal of the agricultural covenant. I'm not sure that 76-4-130, which clearly states "A person may not construct or use a facility that deviates from the Certificate of Subdivision Approval until the reviewing authority has approved the deviation.", was violated in that the aggregated one acre parcel had no facilities on it, nor did we construct any facilities that deviated from the approval for Parcel B and we did not claim any exemption from review because we knew the parcel would be reviewed as a family transfer.

In the course of the family transfer, new parcel 1A clearly fits the language for 76-4-125 2(e)(ii) in that all of the specific language is appropriate.

We are stating that parcel 1B is exempt from review by 17-36-605(2)(b) because it is a previously approved wastewater system. No new facilities are proposed or anticipated because parcel 1B did not exist previously, there will be any violation of previously approved conditions. The relevance of an off-site water supply violates no conditions of approval and because there is an easement onto an adjoining parcel for the benefit of maintaining the water supply system, does not violate any condition or disallow any of the specific wording of the exemption. The easement in question is shown clearly and labeled clearly and upon approval will be filed with the cos at the C&R office, what could MDEQ review or evaluate that would differ from the requirements of the laws governing surveying? Additionally, where in law or rule does it state specifically that the exemption in 17-36-605(2)(b) are easements included? So we believe that 17-36-605(2)(b) is an appropriate exemption and that the only lot subject to review would be parcel 1C which requires new facilities on a newly created lot. I think that if you disagree possibly we need Jim Madden to give his interpretation as John Palacio used Jim Madden's previous interpretation incorrectly. If you disagree please let me know what steps you feel are necessary to complete this project.

Thank you for your patience and time.



RE: Wiediger Family Transfer EQ# 16-1116

Kingery, Barbara <BKingery@mt.gov>
To: Jean K <jean.kec@gmail.com>
Co: John Palacio <jpalacio@rc.mt.gov>

Tue, Oct 13, 2015 at 8:16 AM

Jake,

I have provided some additional comments below; hopefully this will help,

Have a good week,

Barb

From: Jean K [mailto:jean.kec@gmail.com]
Sent: Friday, October 02, 2015 9:44 AM

To: Kingery, Barbara **Cc:** John Palacio

Subject: Wiediger Family Transfer EQ# 16-1116

Barb.

Thank you for your September 30, 2015 email. I appreciate that you and John Palacio have discussed the project. However, I do believe that the interpretations may be incorrect. So I want to give some history that should shed more light on the facts of the situation.

On July 3, 2001, the Wiediger Redesignation was approved by MDEQ under EQ# 01-2398, which allowed for 2 single family dwellings, 2 wells, 2 drainfields and the review of the stormwater on a 3.9 acre Parcel B. Mr. Wiediger additionally owned an adjoining 1 acre parcel (Tract 6A) which had an agricultural covenant on it. The surveyor, Mr Wiediger, an KEC approached the planning dept. to ascertain the best, most economical way to lift the ag covenant, and because it was Mr. Wiediger's intent to split the property for estate planning purposes, we were given the advice that by aggregating the parcels the ag covenant could be lifted and if Mr Wiediger proposed a family transfer, he could separate the parcel into 3 provided he had the dependents. This was done in one application process and not individual steps. Nothing has yet been filed for the aggregation. When the project is recorded, the aggregation will be recorded and immediately followed by the Family Transfer. Thus the aggregation was only a tool used for the removal of the agricultural covenant. I'm not sure that 76-4-130, which clearly states "A person may not construct or use a facility that deviates from the Certificate of Subdivision Approval until the reviewing authority has approved the deviation.", was violated in that the aggregated one acre parcel had no facilities on it, nor did we construct any facilities that deviated from the approval for Parcel B and we did not claim any exemption from review because we knew the parcel would be reviewed as a family transfer.

Even though aggregations are exempt from the platting act, they are not exempt from the Sanitation Act – need review. I have attached another memo that might help explain from 2002. If the aggregation occurs first, it will either need review or find an exemption from review. The aggregation exemption is not applicable if any of the lots have a COSA. Since there is one lot approved under EQ #01-2398 this action requires review.

In the course of the family transfer, new parcel 1A clearly fits the language for 76-4-125 2(e)(ii) in that all of the specific language is appropriate. OK

We are stating that parcel 1B is exempt from review by 17-36-605(2)(b) because it is a previously approved wastewater system. No new facilities are proposed or anticipated because parcel 1B did not exist previously, there will be any violation of previously approved conditions. The relevance of an off-site water supply violates no conditions of approval and because there is an easement onto an adjoining parcel for the benefit of maintaining the water supply system, does not violate any condition or disallow any of the specific wording of the exemption. The easement in question is shown clearly and labeled clearly and upon approval will be filled with the cos at the C&R office, what could MDEQ review or evaluate that would differ from the requirements of the laws governing surveying? We would specify on the COSA that the water supply serving parcel 1B is located via easement on Parcel? The existing COSA indicates that they are all on the same lot and needs correcting. We have adopted rules that specifically address easments (ARM 17.36.334). We insure that the easement is adequately executed prior to the new approval by either signed easement documents or through documentation on the COS. Additionally, where in law or rule does it state specifically that the exemption in 17-36-605(2)(b) are easements included? Although easements are not specifically listed in this exemption, our rules address, changes to the potable water supply and where they are located are subject to our review. So we believe that 17-36-605(2)(b) is an appropriate exemption and that the only lot subject to review would be parcel 1C which requires new facilities on a newly created lot. I think that if you disagree possibly we need Jim Madden to give his interpretation as John Palacio used Jim Madden's previous interpretation incorrectly. If you disagree please let me know what steps you feel are necessary to complete this project. Jim Madden retired a few years ago. If this does not address your questions, let me know and I can discuss further with our current attorney Paul Nicol.

Thank you for your patience and time.

Jake

17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS

- (1) If a proposed subdivision includes a public or multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the multiple-user systems will be adequately operated and maintained.
- (2) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.
- (3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.
- (4) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. Easements must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:
 - (a) the easement must be in writing signed by the grantor of the easement; or

- (b) if the same person owns both parcels, the easement must be shown on the plat or certificate of survey for the proposed subdivision.
- (5) If a proposed subdivision includes a shared water supply system, or includes a water supply system shared by two or more commercial facilities, the reviewing authority may require the applicant to submit a draft user agreement that identifies the rights of each user. The user agreement must be signed by all users when the lots are sold. User agreements must be in a form acceptable to the department.



Nicol, Paul <PNicol@mt.gov>

Mon, Nov 30, 2015 at 10:13 AM

To: "jean.kec@gmail.com" <jean.kec@gmail.com>

Cc: "Kingery, Barbara" < BKingery@mt.gov>

Dear Jean,

You have requested a legal opinion as to the availability of the exclusion found in ARM 17.36.605(2)(b) for the proposed Wiediger Family Transfer. Here is DEQ's response. I have also attached the prior opinion that is referenced in my opinion.

I have been asked to clarify whether ARM 17.36.605(2)(b) can be used to exclude proposed lot B from DEQ's review. That question requires a determination as to whether "facilities other than those previously approved exist or will be constructed on the parcel," and whether "the division of land will not cause approved facilities to deviate from the conditions of approval..."

It appears that the proposal will not create any new facilities so this proposal would satisfy the first part of that question. However, it is my opinion that the proposal will cause approved facilities to deviate from the current conditions of approval. Accordingly, the use of the exclusion listed in ARM 17.36.605(2)(b) would not be appropriate under these circumstances.

This rationale is based primarily on a previous opinion by my predecessor Jim Madden. In a legal email from November 1, 2004, Jim states "[a] change (or elimination) of parcel boundaries that causes an approved facility to be appurtenant to a different parcel is a violation of a condition of approval. It is therefore not eligible for the exclusion in ARM 17.36.605(2)(b)."

The proposal I have reviewed either moves or creates a new boundary line that causes an approved well (that would serve lot B) to be located appurtenant to lot B. Jim's previous opinion is directly on point.

With that stated I believe it is important to also state why that opinion still makes practical sense. Because this proposal creates a lot where the water supply is located on another lot, it is necessary for DEQ to ensure that future owners of the new lot will have legal access to that water supply in perpetuity. DEQ has that authority pursuant to ARM 17.36.334(4) which requires an easement when DEQ determines that one is necessary "to allow adequate operation and maintenance of the system..."

Under these circumstances an easement is necessary and it is necessary for DEQ to review the easement

documents that would allow future owners of lot B access to the well. Accordingly, a rewrite is required.

Paul Nicol

Special Assistant Attorney General

Montana Department of Environmental Quality

P.O. Box 200901

Helena, MT 59620-0901





Jean K <jean.kec@gmail.com>
To: "Nicol, Paul" <PNicol@mt.gov>

Tue, Dec 1, 2015 at 6:22 PM

Paul,

I would appreciate the opportunity to give you additional information of certain aspects of the project you are asked to evaluate because I am not sure you were given all the pertinent data necessary to enable you to make a factual interpretation.

You are correct in your determination that no new facilities are proposed or required for Parcel B. However, I believe you are incorrect in your opinion that the proposal will cause approved facilities to deviate from the current conditions of approval, in that Jim Madden's Nov. 1 2004 opinion is specific unto either an aggregation of lots (elimination of boundary line) or a change in the parcel boundaries which he specifically speaks to. In that case I believe you are correct, in that any approved facility that would be not according to the previous approval with regard to its location would not be eligible for ARM 17.36.605(2)(b).

The proposal you have reviewed does not move or eliminate a boundary. It creates an entirely new lot where there was one, and now there are two. All of the approved facilities from the original approval are as accepted by DEQ. That there is an off-site water supply system is not an issue in that the newly created lot has a previously approved water supply system.

The issue of a proper easement should really have not come into the determination. The Certificate of Survey that is required to be filed with the other family transfer documents with the County Clerk and Recorder clearly and adequately shows the proper easement which ensures future owners legal access to the water supply, thus ARM 17.36.334(4) is satisfied. Had I not had a similar, though slightly different situation under Steve Kilbreath, whereby I was correct in the use of this exemption, I'd let it go. However, we are not moving a boundary line. We are not aggregating a lot, we are creating a new lot where one did not exist and the verbadum wordage of ARM 605(2)(b) is absolutely complied with in this case, especially when the certificate of survey is examined.

A rewrite is definitely not the correct way to go in that a rewrite suggests something on an approved lot has changed and that really isn't the case. A new lot was created. I would sincerely appreciate it if you could find the time to take another look at the entire proposal in that all aspects of what we have proposed seem very clear.

In my opinion, Theresa Blazevich's original request to Jim and Ray clearly show that Jim's opinion has nothing to do with the creation of a new lot as is the case with us.

I have attached a copy of the previous approval and a copy of the COS.

Jake

5 attachments

Montana Code Annotated 2015

Previous Section MCA Contents Part Contents Search Help Next Section

76-4-126. Right to hearing. (1) Upon a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the board. A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board shall incorporate the determination of the local authority in the board's final decision.

History: En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006; amd. Sec. 13, Ch. 490, L. 1985; amd. Sec. 5, Ch. 79, L. 2001.

Provided by Montana Legislative Services

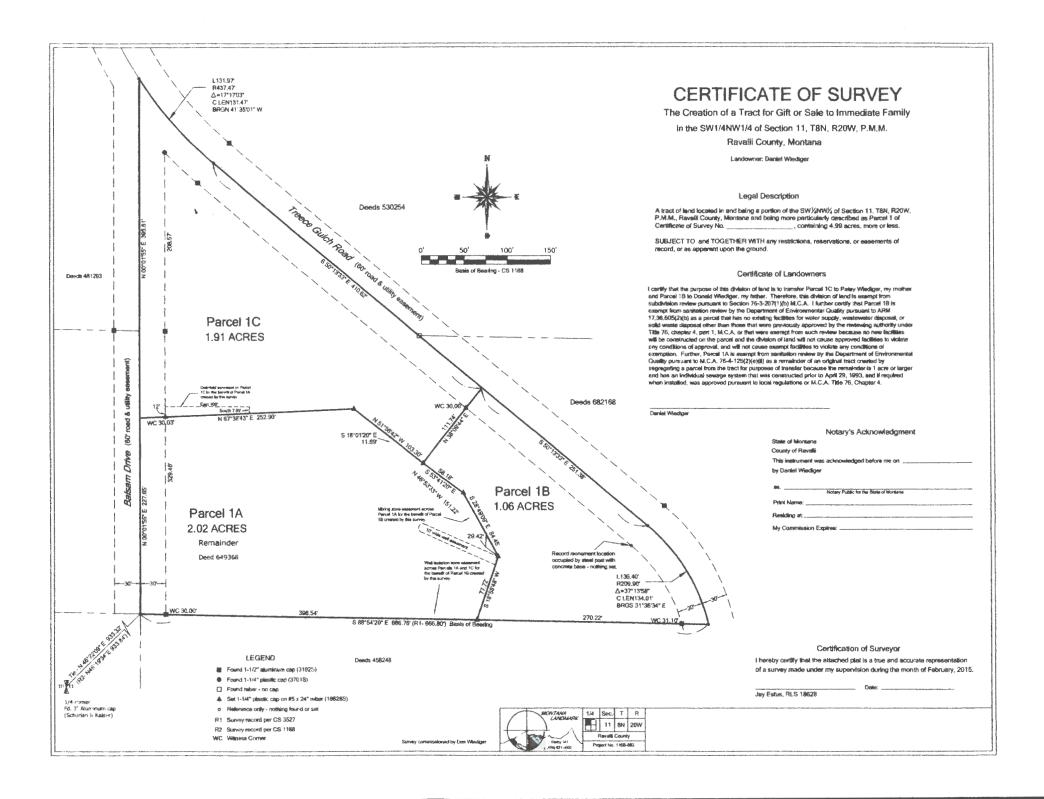
Montana Code Annotated 2015

Previous Section MCA Contents Part Contents Search Help Next Section

76-4-130. Deviation from certificate of subdivision approval. A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9); amd. Sec. 15, Ch. 490, L. 1985; amd. Sec. 12, Ch. 280, L. 2001.

Provided by Montana Legislative Services





December 23, 2015

Kammerer Environmental Consulting, LLC 4035 Sunnyside Rd. Stevensville, MT 59870

RE: Wiediger Family Transfer, EQ# 16-1116

Dear Mr. Kammerer:

On September 1, 2015, Ravalli County Environmental Health, sent you a denial letter for the proposed Wiediger Family Transfer, EQ# 16-1116. In that denial letter you were informed of your right to appeal the Department's denial of your application pursuant to Section 76-4-126, MCA. You did not appeal that decision within the 30 day timeframe. Rather than appeal the Department's denial, you requested that the Department reconsider the facts and circumstances of the application. Although the Department was not obligated to do so, the Department has reconsidered its denial based on your subsequent requests. After that review the Department maintains that denial of your application was the only appropriate alternative given the circumstances.

The Department will no longer consider your requests for reconsideration of this denial. However, the Department will consider your application if you are willing to submit the additional information requested in the denial letter. Additionally, the Department is also willing to allow you an additional 30 days to appeal the September 1, 2015, denial if that is the course of action that you feel is the most appropriate.

Sincerely,

Paul J. Nicol Staff Attorney

Department of Environmental Quality

(406) 444-5690

RETURN TO: DAN WIEDIGER 3615 HIGHWAY 93 STEVENSVILLE, MT 59870

EASEMENT AGREEMENT BETWEEN PARCELS 1A AND 1B WIEDIGER FAMILY TRANSFER

KNOW YE ALL PERSONS, that this Agreement is made and executed this day of
by <u>DANIEL WIEDIGER</u> , current owner of Parcei 1A and Parcei 1B, nerein referred to as "Deciarant"
THIS AGREEMENT is legally-binding on any owners, heirs or assigns, now or in the future that may be affected by this Agreement.
LET IT BE KNOWN, that there exists on Parcel 1.A, a ten-foot easement for the wellhead and maintenance of the waterline across Parcel 1.B, for the benefit and protection of Parcel 1.B, as is clearly defined on the Certificate of Survey recorded with the Clerk and Recorder of Ravalli County.
THIS EASEMENT is to run with the land and is subject to all existing and future laws governing easement and access as they pertain to Parcel 1A and Parcel 1B only.
ANY DISPUTES OR DISAGREEMENTS regarding this Easement, which cannot be settled amicably between the parties subject to this Agreement, shall be settled in a court having jurisdiction over such land use in Ravalli County, Montana.
THIS EASEMENT AGREEMENT shall go into effect upon the filing of the Certificate of Survey describing Parcel 1A and Parcel 1B and will be binding on both parties subject to the restrictions, reservations and use of this Easement.
Daniel Wiediger, Declarant
STATE OF MONTANA
County of Ravalli
On this day of your 2015, before me, the undersigned, a Notary Public for the
State of Montana, personally appeared <u>DANIEL WIEDIGER</u> known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above

written.



December 23, 2015

Jean or Jake Kammerer Kammerer Environmental Consulting, Inc. 4035 Sunnyside Cemetery Rd. Stevensville, MT 59807-6311

RE: Silverado Heights Subdivision Lots 1 and

10 Second Rewrite Ravalli County EO # 16-1383

Dear Mr. Kammerer:

The application for the above referenced subdivision was received by this office and reviewed in accordance with ARM Title 17, Chapter 36. This is to inform you that the subdivision application cannot be approved at this time. The Department is requesting additional information to demonstrate compliance with the Sanitation in Subdivisions Act (76-4-101, MCA) and regulations (ARM Title 17, Chapter 36).

Until the information required by law and regulation as specified in this letter is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction. Because the Department must make a decision to deny or approve your application within statutory deadlines, the Department hereby denies the application until the required information is submitted for review.

If you wish to appeal the Department's denial of certification, you may request a hearing before the Board of Environmental Review, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

When you submit the additional information for our review, please use the submittal title and E.Q. # noted above to ensure that the information is placed with your particular proposal.

If you have any questions on the above, please feel free to call me at the Permitting and Compliance Division at (406) 444-5368.

Sincerely,

Barbara Kingery, PE

Environmental Engineering Specialist

Barbara King

Subdivision Section

Public Water and Subdivision Bureau

e-mail - Bkingery@mt.gov

c: file

Ravalli County Sanitarian

Broadhead Development, LLC., Katherine Gerhard, Thomas Gerhard, Robert Bissett, 2636 Seneca

Page 2 December 23, 2015

RE: Silverado Heights Subdivision Lots 1 and

10 Second Rewrite Ravalli County EQ # 16-1383

Additional Information:

This subdivision of land was reviewed and approved under EQ# 06-1447 dated 3/13/2007. It was rewritten for a change of use from residential to commercial and approved under EQ# 08-2711 dated 8/6/2008. Pursuant to current ARM 17.36.112, the review of a rewrite application is "subject to the requirements in effect at the time the application is submitted. Facilities previously approved under Title 76, chapter 4, MCA, are not subject to re-review, if they are not proposed to be changed "A change in use at this time (from commercial to residential) requires all facilities for water, wastewater, stormwater and degradation to meet current rules. Because minimum requirements for water supplies have changed since both the 2007 and 2008 approvals of this site, your water supply will need to show compliance with current regulations. If you are not proposing any changes to the approved wastewater system (design maximum of 600 gap and 500 lineal feet of trench), the degradation analysis (k = 287.4 ft/d. i = 0.014 ft/ft mz = 100 ft) or storm drainage plan, because the applicable rules have not changed since 2007 you will not need to re-evaluate these systems.

Below are comments relating to the change in rules that have occurred since the 2007 approval. All items below are available for waiver pursuant to ARM 17.36.601. Note waiver requests must include justification for the design and a \$200 review fee.

General

- 1. DEQ received Check # 1169 for \$ 150.00 on 11/2/15. The amount due for review is \$320. Please submit the balance of \$170. A fee sheet is attached for your reference. Please note, depending on the continued review of this file, additional fees may be necessary.
- 2. Please provide a letter of comment from DNRC regarding the water rights for this project as per ARM 17.36.103.
- 3. Please provide a lot layout for the proposed lots as per ARM 17.36.103.
- 4. Please provide a letter of comment from the local health officer as per ARM 17.36.108.

Water and Non Degradation

- 5. As outlined in ARM 17.36.323, the location of the well does not meet current setback rules from the approved drainfield mixing zone. Please reconcile.
- 6. Please provide a water sample from this aquifer for nitrates and specific conductance as per ARM 17.36.331.

Additional questions or comments may be required based upon the continued review of this file and the content of future submittals

EQ#16-1383

Choose type of lots, water system, wastewater system, nondegradation, and other components as necessary

TIME	DE	OF	IO	TC
AI	FL	UF	LU	10

		Unit		Total
	Unit	cost	Number of Units	(unit cost x no. of units)
Subdivision lot	lot/parcel	\$125		\$
ondo unit - Trailer court - RV campground	unit/space	\$50		\$
tesubmittal fee - previously approved lot/boundaries not changed	lot/parcel	\$75	2.00	\$15
TYPE OF WATER SYSTEM				
Cisterns	unit	\$85		S
individual or shared water supply system (existing/proposed)	unit	\$85	2.00	\$17
Valitiple user water system (non-public)	unit*	\$315		S
*plus \$105 per hour for review in excess of 4 hours	hour	\$105	If Required	To be invoiced
extension of existing system	lineal foot	\$0.50	11 Acquired	\$
connection to approved existing distribution system	lot/unit	\$70		S
Public water system	NO UNIT	370		-
DEQ 1 or DEQ 3 Water System	component		per 17.38.106	To be invoiced
new distribution system	lineal foot	\$0.50	per 17,50,100	S S
connection to distribution system	lot/structure	\$70		S
TYPE OF WASTEWATER SYSTEM	1003tt detaile	3.01		-
	· 1	675		6
Existing systems	unit	\$75		\$(
New gravity subsurface system	drainfield	\$95		
New pressure-dosed, elevated sand mound, ET system,	design*	\$190		\$
intermittent sand filter, ETA system, recirculating sand filter,	drainfield	\$50		\$
recirculating trickling filter, aerobic treatment unit,				
nutrient removal, and subsurface drip		6105	Yen	The best send and
*plus \$105 per hour for review in excess of 2 hours	hour	\$105	If Required	To be invoiced
New multiple user wastewater system (non-public)	unit*	6106	Per Type Above	To be invoiced
*plus \$105 per hour for review in excess of 4 hours	hour	\$105	If Required	
new collection system	lineal foot	\$0.50		S
connection to new multi-user system	lot/unit	\$70		3
Public wastewater system			17 20 100	
DEQ 2 or DEQ 4 Treatment System	component		per 17.38.106	To be invoiced
new collection ssytem	lineal foot	\$0.50		S S
connection to existing system	lot/structure	\$70		J
OTHER				
Deviation from Circular	request*	\$200		S
*plus \$105 per hour for review in excess of two hours	hour	\$105	If Required	To be invoiced
Waiver from Rules	request*	\$200		
*plus \$105 per hour for review in excess of two hours	hour	\$105	If Required	To be invoiced
Reissuance of original approval statement	request	\$60		
Nondegradation review - nonsignificance determinations				
individual/shared	drainfield	\$60		
multiple-user	lot/structure	\$30		
public	drainfield	240	per 17.3/8/106	To be invested
Storm drainage plan review - plan exempt from DEQ-8	lot	\$40		
Storm drainage plan review - DEQ-8 review	design*	\$180		
	lot	\$40		
*plus \$105 per hour for review in excess of 30 minutes per lot	hour	\$105	If Required	To be invoiced
Preparation of environmental impact statements/EAs		actual	If Required	To be invoiced
Gray water reuse systems. This is a stand-alone fee and all gray water reuse systems will be reviewed at the unit cost	unit*	\$95		
*plus \$105 per hour in excess of two hours		\$105	If Required	To be invoiced
F Fr	hour	3103	n vedanen	\$33

STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY CERTIFICATE OF SUBDIVISION APPROVAL

(Section 76-4-101 et. seq., MCA)

TO: County Clerk and Recorder

E.Q. # 08-2711

Ravalli County Hamilton, Montana

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Silverado Heights Subdivision, Rewrite

Legal Description: in the SW 1/4, Section 29, T6N, R20W, P.M.M., Ravalli County, Montana

consisting of ten lots have been reviewed by personnel of the Permitting and Compliance Division, and,

THAT this approval supersedes previous approvals under EQ# 06-1447 of 11/04/05 and 03/13/07, and,

THAT the documents and data required by ARM Chapter 17 Section 36 have been submitted and found to be in compliance therewith, and,

THAT the approval of the Plat is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the Plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT Lots 1 and 10 shall each be used for one light commercial or office building and Lots 2 through 9 shall each be used for either one single family residence or one light commercial or office building, and,

THAT each individual water systems will consist of a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT the data provided indicates an acceptable water source at a depth of approximately 100 feet, and.

THAT the individual water systems shall not serve more than 24 people for any 60 days of the year, and,

Subdivision Approval
Page 2 of 3
Silverado Heights Subdivision, Rewrite
EQ #08-27!!
Ravalli County

THAT each individual wastewater treatment system will consist of a septic tank, effluent filter, and subsurface drainfield of such size and description as will comply with Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM, and,

THAT the subsurface drainfields for Lots 6 and 7 shall have an absorption area of sufficient size to provide a maximum application rate of 0.4 gallons per day (gpd) per square foot of drainfield; the subsurface drainfields for Lots 1, 2, 3, 8, 9, and 10 shall have an absorption area of sufficient size to provide a maximum of 0.6 gpd per square foot of drainfield; the subsurface drainfields for Lots 4 and 5 shall have an absorption area of sufficient size to provide a maximum of 0.8 gpd per square foot of drainfield, and,

THAT the commercial buildings shall not exceed a total daily wastewater flow of 600 gallons, and,

THAT the commercial establishments shall not dispose of any hazardous/deleterious waste substances in the wastewater disposal system, and,

THAT the bottoms of the drainfields shall be at least four feet above the water table, and,

THAT no wastewater treatment system shall be constructed within 100 feet of the maximum high water level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any water supply source, and,

M

THAT the storm water facilities shall be sized and located as shown on the attached grading and drainage plan, prepared by PCI engineering and received by the Department on July 31, 2008, and,

THAT the water supply, wastewater treatment and storm drainage systems <u>must be located as</u> shown on the approved plans and attached lot layout, and,

THAT the developer and/or owner of record shall provide each purchaser of property with a copy of the Plat, approved location of water supply and wastewater treatment system as shown on the attached lot layout, and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT plans and specifications for any proposed wastewater treatment systems will be reviewed and approved by the county health department and will comply with local regulations and ARM, Title 17, Chapter 36, Subchapters 3 and 9, before construction is started.

THAT departure from any criteria set forth in the approved plans and specifications and Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Environmental Quality.

Pursuant to Section 76-4-122 (2)(a), MCA, a person must obtain the approval of both the State under Twle 76, Chapter 4, MCA, and local board of health under section 50-2-116(1)(i), before

Subdivision Approval
Page 3 of 3
Silverado Heights Subdivision, Rewrite
EQ #08-2711
Ravalli County

filing a subdivision plat with the county clerk and recorder.

YOU ARE REQUESTED to record this certificate by attaching it to the Plat filed in your office as required by law.

DATED this 1st day of August, 2008

RAVALLI COUNTY HEALTH OFFICER

Morgan T. Farrell, R. S.

Ravalli County Environmental Health

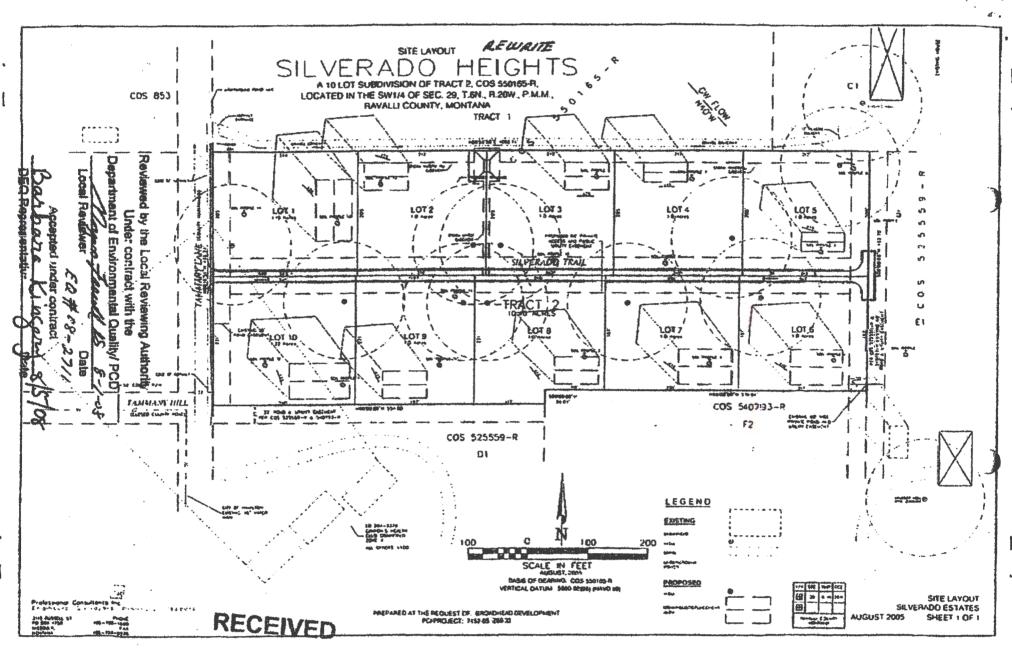
215 South 4th - Suite D Hamilton, MT 59840 RICHARD OPPER DIRECTOR

By: Barbara Kingern Steve Kilbreath, Supervisor

Subdivision Review Section
Public Water and Subdivision Bureau
Permitting and Compliance Division

Department of Environmental Quality

Owner's Name: Broadhead Development, LLC



FUU 42003

MT DEQ PUBLIC WATER & SUSDIVISION BUREAU



STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY CERTIFICATE OF SUBDIVISION APPROVAL

(Section 76-4-101 et. seq., MCA)

TO: County Clerk and Recorder

E.Q. # 06-1447

Ravalli County Hamilton, Montana

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Silverado Heights

A ten lot subdivision of Tract 2, COS 550165-R, located in the SW ¼ of Section 29, T6N, R20W, P.M.M., Ravalli County, Montana

consisting of ten lots have been reviewed by personnel of the Permitting and Compliance Division, and,

THAT this approval supercedes the approval under the same EQ number of 11/04/05, and,

THAT the documents and data required by ARM Chapter 17 Section 36 have been submitted and found to be in compliance therewith, and,

THAT the approval of the Plat is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the Plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT Lots 2 through 9 shall be used for one single-family dwelling and, Lots 1 and 10 shall be used for light commercial or office buildings, and,

THAT each individual water system will consist of a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT the data provided indicates an acceptable water source at a depth of approximately 100 to 200 feet, and,

That the individual water systems for Lots 1 and 10 shall not serve more than 24 persons, and,

THAT each individual wastewater treatment system will consist of a septic tank, effluent filter, and subsurface drainfield of such size and description as will comply with Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM, and,

THAT the subsurface drainfields for Lots 6 and 7 shall have an absorption area of sufficient size to

Subdivision Approval
Page 2 of 3
Silverado Heights
EQ #06-1447
Ravalli County

provide a maximum application rate of 0.4 gallons per day (gpd) per square foot of drainfield; the subsurface drainfields for Lots 1, 2, 3, 8, 9 and 10 shall have an absorption area of sufficient size to provide a maximum of 0.6 gpd per square foot of drainfield; the subsurface drainfields for Lots 4 and 5 shall have an absorption area of sufficient size to provide a maximum of 0.8 gpd per square foot of drainfield, and,

That the commercial buildings on Lots 1 and 10 shall not exceed a total daily wastewater flow of 600 gallons, and,

THAT the commercial establishments on Lots 1 and 10 shall not dispose of any hazardous/deleterious waste substances in the wastewater disposal system, and,

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

THAT no wastewater treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any water supply source, and,

THAT the water supply, wastewater treatment and storm drainage systems <u>must be located as shown on the approved plans and attached lot layout, and.</u>

THAT the developer and/or owner of record shall provide each purchaser of property with a copy of the Plat, approved location of water supply and wastewater treatment system as shown on the attached lot layout, and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT plans and specifications for any proposed wastewater treatment systems will be reviewed and approved by the county health department and will comply with local regulations and ARM, Title 17, Chapter 36, Subchapters 3 and 9, before construction is started.

THAT departure from any criteria set forth in the approved plans and specifications and Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Environmental Quality.

Pursuant to Section 76-4-122 (2)(a), MCA, a person must obtain the approval of both the State under Title 76, Chapter 4, MCA, and local board of health under section 50-2-1 io(1)(i) before filing a subdivision plat with the county clerk and recorder.

YOU ARE REQUESTED to record this certificate by attaching it to the Plat filed in your office as required by law.

Subdivision Approval Page 3 of 3 Silverado Heights EQ #06-1447 Ravalli County

DATED this 8th day of March, 2007

RAVALLI COUNTY HEALTH OFFICER

Morgan 7. Farrell, R. S.

Ravalli County Environmental Health

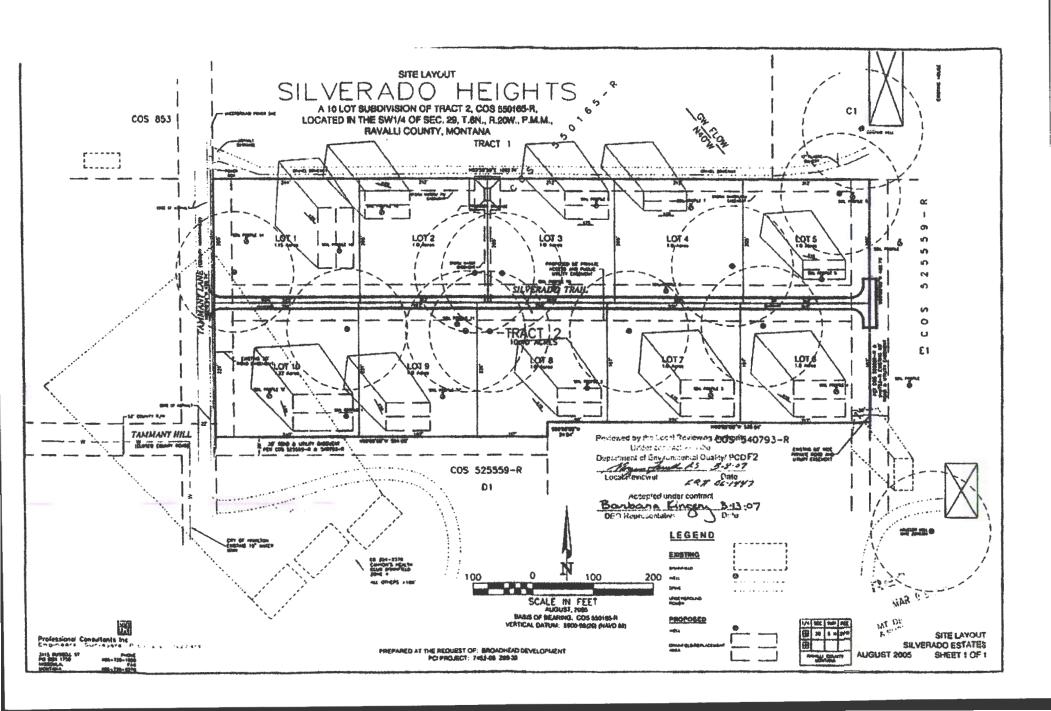
215 South 4th - Suite D Hamilton, MT 59840 RICHARD OPPER DIRECTOR

By: Barbana Kingery
Steve Kilbreath, Supervisor

Subdivision Review Section

Public Water and Subdivision Bureau Permitting and Compliance Division Department of Environmental Quality

Owner's Name: Broadhead Development LLC







NOV 0 7 2005

RAVALLI COUNTY ENVIRONMENTAL HEALTH

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.state.mt.us November 4, 2005

Bccky Weaver Professional Consultants Inc. P.O. Box 1750 Missoula, MT 59806

RE:

Silverado Heights

Ravalli County E.O. #06-1447

Dear Ms. Weaver:

The plans and supplemental information relating to the water supply, sewage, solid waste disposal, and storm drainage (if any) for the above referenced division of land have been reviewed as required by ARM Title 17 Chapter 36(101-805) and have been found to be in compliance with those rules.

Two copies of the Certificate of Subdivision Plat Approval are enclosed. The original is to be filed at the office of the county clerk and recorder. The duplicate is for your personal records.

Development of the approved subdivision may require coverage under the Department's General Permit for Storm Water Discharges Associated with Construction Activity, if your development has construction-related disturbance of one or more acre. If so, please contact the Storm Water Program at (406) 444-3080 for more information or visit the Department's storm water construction website at http://www.deq.state.mt.us/wqinfo/MPDES/StormwaterConstruction.asp. Failure to obtain this permit (if required) prior to development can result in significant penalties.

Your copy is to inform you of the conditions of the approval. Please note that you have specific responsibilities according to the plat approval statement primarily with regard to informing any new owner as to any conditions that have been imposed.

If you wish to challenge the conditions of this Certificate of Subdivision Plat Approval, you may request a hearing before the Board of Environmental Review or the Department, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

If you have any questions, please contact this office.

Sincerely.

Subdivision Review Section

SK/gw

cc:

County Sanitarian
County Planning Board

STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY CERTIFICATE OF SUBDIVISION APPROVAL

(Section 76-4-101 et. seg., MCA)

TO: County Clerk and Recorder

Ravalli County

Hamilton, Montana

E.Q. #06-1447

personal #

by approval #

parame

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Silverado Heights

A 10 Lot Subdivision of Tract 2, COS 550165-R, Located in the SW1/4 of Sec. 29, T.6N., R.20W., P.M.M., Ravalli County, Montana

consisting of 10 lots have been reviewed by personnel of the Permitting and Compliance Division, and.

THAT the documents and data required by ARM Chapter 17 Section 36 have been submitted and found to be in compliance therewith, and,

THAT the approval of the Plat is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the Plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT each lot shall be used for one single-family dwelling, and,

THAT each water system will consist of a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT the data provided indicates an acceptable water source at a depth of approximately 100 to 200 feet, and,

THAT each individual wastewater treatment system will consist of a septic tank, effluent filter, and subsurface drainfield of such size and description as will comply with Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM, and,

THAT each subsurface drainfield shall have an absorption area of sufficient size to provide a maximum application rate of 0.4 gallons per day (gpd) per square foot of drainfield for lots 6 & 7, 0.6 gpd for lots 1,2,3,8,9, and 10, and 0.8 gpd for lots 4 and 5.

Subdivision Approval Page 2 of 2 Silverado Heights EQ #06-1447 Ravalli County

THAT the bottom of the drainfield shall be at least four feet above the water table, and.

THAT no wastewater treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any water supply source, and,

THAT the water supply, wastewater treatment and storm drainage systems <u>must be located as shown on the approved plans and attached lot layout, and,</u>

THAT the developer and/or owner of record shall provide Each purchaser of property with a copy of the Plat, approved location of water supply and wastewater treatment system as shown on the attached lot layout, and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT plans and specifications for any proposed wastewater treatment systems will be reviewed and approved by the county health department and will comply with local regulations and ARM, Title 17, Chapter 36, Subchapters 3 and 9, before construction is started.

THAT departure from any criteria set forth in the approved plans and specifications and Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Environmental Quality.

Pursuant to Section 76-4-122 (2)(a), MCA, a person must obtain the approval of both the State under Title 76, Chapter 4, MCA, and local board of health under section 50-2-116(1)(i), before filing a subdivision plat with the county clerk and recorder.

YOU ARE REQUESTED to record this certificate by attaching it to the Plat filed in your office as required by law.

DATED this 24th day of October, 2005.

RAVALLI COUNTY HEALTH OFFICER

Morgan T. Farrell, R. S.

Ravalli County Environmental Health

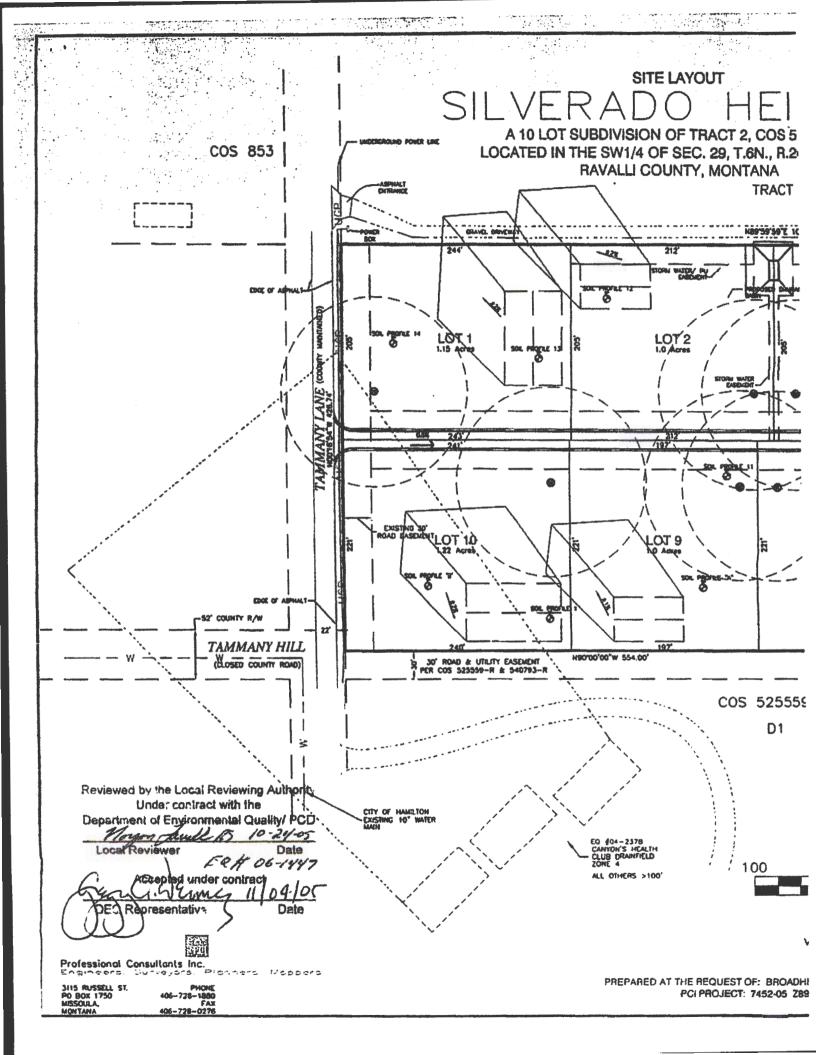
215 South 4th St. Suite D Hamilton, MT 59840 RICHARD OPPER

DIRECTOR

Steve Kilbreath, Supervisor Supervisor

Public Water and Subdivision Review Permitting and Compliance Division Department of Environmental Quality

Owner's Name: Broadhead Development LLC





Ravalli County Environmental Health 215 South 4th Street – Suite D Hamilton, MT 59840 (406) 375-6565 FAX (406) 375-6566

November 20, 2015

Jake Kammerer Kammerer Environmental Consulting, LLC 4035 Sunnyside Cemetery Rd. Stevensville, MT 59870

RE: EQ# 16-1383, Silverado Heights Sub Lots 1 & 10 Rewrite

Dear Mr. Kammerer:

The application for the above referenced subdivision was received by this office and reviewed in accordance with ARM Title 17, Chapter 36. This is to inform you that the subdivision application cannot be approved at this time. The Department is requesting additional information to demonstrate compliance with the Sanitation in Subdivisions Act (76-4-101, MCA) and regulations (ARM Title 17, Chapter 36).

Until the information required by law and regulation as specified in this letter is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction. Because the Department must make a decision to deny or approve your application within statutory deadlines, the Department hereby denies the application until the required information is submitted for review.

If you wish to appeal the Department's denial of certification, you may request a hearing before the Board of Environmental Review, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

When you submit the additional information for our review, please use the submittal title and EQ # noted above to ensure that the information is placed with your particular proposal.

If you have any questions on the above, please contact me at the address above or call me at (406) 375-6565 or you can fax the additional information to the fax number (406) 375-6566.

John Palacio, RS

Sincerely

cc: DEQ, Subdivision Review Section

Owner

Additional Information

1. Please submit all required information regarding the re-write of Silverado Heights Sub Lots

Additional questions or comments may be required based upon the continued review of this file and the content of future submittal.

Montana Code Annotated 2015

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76-4-126. Right to hearing. (1) Upon a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the board. A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board shall incorporate the determination of the local authority in the board's final decision.

History: En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006; amd. Sec. 13, Ch. 490, L. 1985; amd. Sec. 5, Ch. 79, L. 2001.

Provided by Mentana Legislative Services

Montana Code Annotated 2015

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76-4-130. Deviation from certificate of subdivision approval. A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9); amd. Sec. 15, Ch. 490, L. 1985; amd. Sec. 12, Ch. 280, L. 2001.

Provided by Montana Legislative Services



Silverado Heights

John Palacio jpalacio@rc.mt.gov>
To: Jean K /pan.kec@gmail.com>

Thu, Nov 5, 2015 at 4:13 PM

Hi Jean and Jake, regarding the change from commercial to single-family/commercial, DEQ will not accept the same designation that the other lots have of single-family or light commercial. The designation for the re-write that you are proposing would be for single-family AND light commercial. The facilities will have to address the sizing and accommodation of both single-family and commercial, including the requirements of a 500' mixing zone for the drainfield. With that said, the proposal would be for a new system and would also have to meet the Ravalli County requirement of keeping the mixing zone within the property unless an easement is obtained.

John Palacio, RS

Ravalli County Environmental Health

215 S. 4th St., Suite D

Hamilton, MT 59840

Phone: (406)375-6568

Fax: (406)-375-6566



EQ #16-1383, Silverado Heights Subdivision Lots 1 and 10 Rewrite

Jean K <jean.kec@gmail.com>
To: John Palacio <jpalacio@rc.mt.gov>

Mon, Dec 7, 2015 at 4:33 PM

John, I have received an email from Barb Kingery. It doesn't seem as though Barb wants to get in between you and I in our understandings of what should be required. My position is that nothing has changed or will change from the evaluation previously approved other than the word residential added to what was previous approved for the other 8 lots, which, by the way, was reviewed and approved by Barb Kingery when she was a reviewer. In Barb's email she made reference to a policy change that would require a COSA to say residential or commercial, not either/or.

Could you email me a copy of that signed and dated policy change from your records as I don't recall ever seeing one. I would also like to discuss this matter further in that everything was previously reviewed for a greater volume of flow and stormwater was addressed by a professional engineer. Please give me a call at your earliest convenience.

Jake



Tue, Dec 8, 2015 at 4:58 PM

Good morning Jake, after speaking with Barb regarding the review for re-write of Lots 1 and 10 of Silverado Heights, we have concluded that since the disagreement seems to be with DEQ's policies that further review will be conducted by DEQ.

John Palacio, RS

Ravalli County Environmental Health

215 S. 4th St., Suite D

Hamilton, MT 59840

Phone: (406)375-6568

Fax: (406)-375-6566



Jean K <jean.kec@gmail.com>
To: Barbara Kingery

Skingery@mt.gov>

Tue, Dec 8, 2015 at 5:29 PM

Good morning, Barb. If you would, please look at this email from John to us. One of the points of discussion is the DEQ policy change which John did not have a copy of and I do not have a copy of, so I am requesting a written signed and dated copy of the policy so I can discuss it with my clients. Thanks. Jake

[Quoted text hidden]



Silverado Heights

Jean K <jean.kec@gmail.com>
To: John Palacio <jpalacio@rc.mt.gov>

Mon, Nov 9, 2015 at 10:45 AM

Hi, John. Based on your email, we would like the designation to read residential single-family for those two lots. Can you white out any reference to commercial or light commercial? If that is too much of an imposition, we can come in with some white out on Tuesday and change the application to say single-family residential.

[Quoted text hidden]



Kingery, Barbara <BKingery@mt.gov>
To: Jean K <jean.kec@gmail.com>
Cc: John Palacio <jpalacio@rc.mt.gov>

Mon, Dec 14, 2015 at 9:23 AM

Jake,

When speaking with John, I indicated that we would review this rewrite in accordance with ARM 17.36.112 (below). The rules have changed since this was approved and as described in rule, we will need to look at the rewrite according to our current rules. A change from commercial to residential living units would necessitate the following consideration:

Wastewater: Both lots currently approved for 600 gpd – the equivalent of a 9 bedroom house and a 100 foot mixing zone was granted to each drainfields. The approval indicates a gravity system. Not sure how this will be achieved without pressure dosing but this could be addressed or reviewed. The standard mixing zone for this property would be 100 foot therefore, non-deg probably would not apply – although see water below.

Water: The water quantity is substantiated in the previous approval. The current lot layout has mixing zones that cross well isolation zones. This is not permitted by current rules. A waiver showing how the design is protective of public health may be necessary. Additionally, if we review the water, then we will need a letter from DNRC indicating the status of the well (exempt or need a water right).

Stormwater: Approval is for a 10, 350 cf pond to serve all lots and roadside ditches. There are also a number of easements in place. If there is not a change to this, then we will not need to re-review.

As with all things, it is difficult to know specifics of a file until all of the information is submitted for review. There may be additional questions as a result of the application.

Hope this helps,

Barb



Jean K <jean.kec@gmail.com>
To: "Kingery, Barbara" <BKingery@mt.gov>

Mon, Dec 14, 2015 at 11:28 AM

Barb, Thank you for today's email. I understand why John may not desire to review this project as I have asked him several questions and made several statements he has not been adequately able to address. As I understand your position as the director of the section and not a reviewing agent, I would ask that you allow me to open a dialogue with whoever the reviewer might be. However, as I'm sure you will wind up involved in the ultimate decision, I would appreciate addressing the remainder of your email to clarify my position.

WASTEWATER: In fact, both lots are not currently approved for 600 gallons per day. The current approval for lots 1 and 10 states: "shall not exceed a total daily wastewater flow of 600 gallons." If a three bedroom permit was requested that would only require 300 gallons per day. Half of the maximum total approved. That would equate to half the impact.

WATER: I appreciate the necessity for a letter from DNRC as that is not in the control of DEQ. However, as I read 17.36.112(6) there is no change in the facilities previously approved under Title 76.4.MCA. Consequently, they would not be subject to review. If they are not subject to review then the issue of the previously approved zone of influence of the well, and the mixing zone, is not subject to review, as the law cannot go back in time. When speaking of facilities, it is quite clear to me that 17.36.112 is speaking about water supply, wastewater disposal, solid waste disposal, and stormwater drainage. It is clear that this is not speaking about the source that supplies or is supplied by the facilities mentioned above. To summarize, it would seem to me that the application and the previous approval which was submitted to John would satisfy 17.36.112(3),(4) and (5).

Finally, once again, we are proposing a change in semantics. substituting or including the word residential as in lots 2-9. Additionally, John was not able to provide me with a copy of the DEQ's approved, signed and dated policy change that would preclude the use of either/or as is detailed in the C.O.S.A. EQ#08-2711. Would you please send me a copy of it?

Thanks.Jake
[Quoted text hidden]



Kingery, Barbara <BKingery@mt.gov>
To: Jean K <jean.kec@gmail.com>
Cc: John Palacio <jpalacio@rc.mt.gov>

Wed, Dec 23, 2015 at 2:53 PM

Jake.

I am doing the review of this file. Attached is a copy of my denial letter (a hard copy will go out in tomorrow's mail).

As I mentioned, we do not have a policy about rewrites or the re-review of facilities...there was a lot of confusion so to clarify we adopted a rule. ARM 17.36.112 requires that when you are applying for a change in an approved subdivision, all of the facilities associated with the change need to comply with current regulations. Changing use on a lot affects all previously approved facilities. But.... there may be cases when the rules in place at the time of the original approval are still applicable to the proposed change. In those cases, a re-review of the same rules would hold little value. I have looked through both old approvals for this parcel and reviewed the information submitted as part of those reviews for water, wastewater, non-degradation and stormwater against current regulations. I would ask in future rewrite submittals that you include this information as part of your application.

For Lots 1 and 10 of the Silverado Subdivision, the setback rules and water rules have changed significantly since the 2007 approval. If you want to keep the same df location and designated mixing zone, we will not need to re-review. But if you change the design or location of these or anything associated with the approved storm drainage plan, than we will need to make sure this still works.

Let me know if you have further questions and have a good holiday,

Barb

From: Jean K [mailto:jean.kec@gmail.com]
Sent: Monday, December 14, 2015 11:28 AM

To: Kingery, Barbara

Subject: Re: Silverado Heights Lot 1 and 10

[Quoted text hidden]



Jean K <jean.kec@gmail.com>
To: "Kingery, Barbara" <BKingery@mt.gov>

Thu, Dec 24, 2015 at 10:19 AM

Barb.

I know that I may be seemingly a difficult consultant to work with; however, I find that again the issues that we are dealing with really are a matter of semantics, and I believe that my interpretation of 17.36.112 are more correct than yours. Clearly when 17.36.112 ARM is speaking about facilities they are NOT speaking about usage or source.

ARM 17.36.101 (17) states: "Facilities means public or private facilities for the supply of water or disposal of sewage, storm water, or solid waste and any pipes, conduits, or other stationary method by which water, storm water, sewage, or solid wastes might be transported or distributed."

The usage or source of a facility is irrelevant upon a resubmittal of this approval in that all parameters of the original approval would be decreased, creating less of an impact. And, I sincerely believe the job of DEQ is to evaluate impacts. To consider one source of impact greater or less than another source of impact seems arbitrary, especially in light of two facts which we know about this subdivision.

(1) The intial approval in 2007 listed these lots as residential.

(2) The other 8 lots in this subdivision are listed as either/or. If the usage was an issue how could there ever have been a time when either/or was acceptable.

You have stated previously to John Palacio of Ravalli County and to myself that there was a DEQ policy change sometime between the last previous approval and now. I have requested 3 times a written, signed, and dated copy of this policy change and have yet to receive it.

As much as it pains me to be a thom in anyone's side, it seem quite clear to me that this is a judgment call that will have to be made by your legal staff in that, even based upon your October 30, 2015 letter, would again clearly imply that facilities are related to water supply, wastewater disposal, stormwater drainage and solid waste disposal and 17.36.112(6) clearly relates facilities as those stated above, in that moving a house or building location doesn't subject a rewrite review; however, moving a facility would. So again, I am stating emphatically, that usage with regard to facility, and source with regard to residential or commercial are two different things and this should not trigger a rewrite.

No new evaluation should be required upon a water supply system that would clearly be reduced from that which was previously reviewed. It is illogical to request a waiver for usage when no usage is changed or being proposed. To ask anyone to spend an addition \$370 for a change in source, not use, is not fair. I would respectfully request you send this off to legal for a legal opinion.

Jake

PS:

(1) We have already applied to DNRC for the water rights determination letter.

(2) We sincerely doubt that Ravalli County will give us a letter of approval until the semantics issue is cleared up.

(3) I would be happy to be part of a 3 way conference call with you and a member of DEQ legal [Quoted text hidden]

Sent: Monday, December 28, 2015 9:57 AM

To: Nicol, Paul

Subject: FW: Silverado Heights Lot 1 and 10

Paul,

Would you have time to visit about another Jake Kammerer project? Below is the email string and attached is some background information. Let me know what works best with your schedule.

Barb

From: Jean K [mailto:jean.kec@gmail.com]
Sent: Thursday, December 24, 2015 10:19 AM

[Quoted text hidden]

[Quoted text hidden]



Nicol, Paul <PNicol@mt.gov>
To: "jean.kec@gmail.com" <jean.kec@gmail.com>
Cc: "Kingery, Barbara" <BKingery@mt.gov>

Tue, Dec 29, 2015 at 4:47 PM

Mr. Kammerer,

I have reviewed the information that you provided as well as the denial letter sent to you on December 23, 2015. I have also read the email correspondences below. I see that you have asked for a legal opinion as to the validity of DEQs denial. At this point in time I am unable to render a legal opinion because the information you provided with your application is incomplete. The denial letter specifically denotes what materials are necessary for DEQ to complete its review. Please submit these materials and DEQ will conduct another review of your application. If a legal opinion is necessary at that time, I will be happy to consider whatever issues there may be.

Additionally, you do have a right to appeal DEQ's decision if you feel that denial of your application was an error. If you feel that is your most appropriate remedy please refer to Section 76-4-126, MCA.

Sincerely,

Paul Nicol

Special Assistant Attorney General

Montana Department of Environmental Quality

P.O. Box 200901

Helena, MT 59620-0901

From: Kingery, Barbara



Memo

TO:

Ben Reed, Hearing Examiner,

Board of Environmental Review

FROM:

Hillary Houle, Board Secretary

P.O. Box 200901

Helena, MT 59620-0901

DATE:

January 5, 2016

SUBJECT:

Board of Environmental Review Case No. BER 2016-03-OC-SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL AMENDMENT AM4, WESTERN ENERGY COMPANY,

ROSEBUD STRIP MINE AREA B, PERMIT

NO. C1984003B

Case No. BER 2016-03 OC SM

The BER has received the attached request for hearing. Also attached is DEQ's administrative document(s) relating to this request.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

John North
Dana David
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Ed Coleman, Chief

Industrial and Energy Minerals Bureau Department of Environmental Quality

P.O. Box 200901

Helena, MT 59620-0901

Attachments



Northwest 1216 Lincoln Street Eugene, Oregon 97401 (541) 485-2471

Rocky Mountains 103 Reeder's Alley Helena, Montana 59601 (406) 443-3501

Southwest 208 Paseo del Pueblo Sur #602 Taos, New Mexico 87571 (575) 751-0351

Defending the West www.westernlaw.org

Western Environmental Law Center

January 4, 2016

Board of Environmental Review Department of Environmental Quality Metcalf Building 1520 East Sixth Avenue PO Box 200901 Helena, Montana 59620-0901

Filed with the
MONTANA BOARD OF
ENVIRONMENTAL REVIEW
This 4 day of anuary, 2016
at 2.49 o'clock ? .m.
By: Hillary Have

Re: Appeal Amendment AM4, Western Energy Company, Rosebud Strip Mine Area B, Permit No. C1984003B

NOTICE OF APPEAL AND REQUEST FOR HEARING

The Montana Environmental Information Center (MEIC) and Sierra Club (collectively, Citizens), pursuant Montana Code Annotated § 82-4-206(1)-(2), and Administrative Rule of Montana 17.24.425(1), hereby files this notice of appeal and request for a hearing regarding Montana Department of Environmental Quality's (DEQ) December 4, 2015, approval of Amendment AM4 to Western Energy Company (WECo) Permit No. C1984003B for the Rosebud Strip Mine, in Colstrip, Montana. The Citizens further requests that the Board of Environmental Review or its appointed hearing examiner hold a hearing on this appeal, pursuant to Administrative Rule of Montana 17.24.425(2).

DEQ's approval of the AM4 Amendment was in error. The grounds of DEQ's error include, but are not limited to, the following:

1. The Surface Mining Control and Reclamation Act (SMCRA) and the Montana Strip and Underground Mine Reclamation Act (MSUMRA) prohibit DEQ from issuing a stripmining permit unless and until the applicant affirmatively demonstrates and DEQ confirms in writing based on record evidence that the cumulative hydrologic impacts from the mining operation will not cause material damage to the hydrologic balance outside the permit area. § 82-4-227(3)(a), MCA; 30 U.S.C. § 1260(b)(3); ARM 17.24.405(6)(c). Material damage includes violation of a water quality standard. § 82-4-203(31), MCA. To assure that the cumulative hydrologic impacts will not cause material damage, DEQ must prepare a cumulative hydrologic impact assessment, or "CHIA." ARM 17.24.314(5). The CHIA must be sufficient to make the material damage determination. *Id*.

- 2. Here, DEQ's CHIA failed entirely to assess whether the cumulative hydrologic impacts would cause violations of applicable nitrogen standards designed to protect aquatic life. DEQ's complete failure to address these applicable water quality standards in its CHIA was unlawful.
- 3. DEQ's CHIA also failed entirely to assess whether the cumulative hydrologic impacts would cause violations of applicable electrical conductivity standards designed to protect agricultural uses of Rosebud Creek and tributaries to Rosebud Creek. DEQ's complete failure to address these applicable water quality standards in its CHIA was unlawful.
- 4. In assessing the cumulative hydrologic impacts, DEQ's CHIA must evaluate the cumulative impacts of all anticipated mining on the hydrologic balance. § 82-4-227(3)(c), MCA. Here, DEQ failed entirely to assess the cumulative hydrologic impacts from massive anticipated mine expansions in Area F and Area G of the Rosebud Mine. DEQ's complete failure to address this anticipated mining was unlawful.
- 5. In assessing the cumulative hydrologic impacts and making the material damage determination, the burden of proof is on the mine applicant to affirmatively demonstrate and

DEQ to confirm based on record evidence that the cumulative hydrologic impacts will not cause material damage to the hydrologic balance outside the permit area. *Id.* § 82-4-227(1). If the applicant cannot demonstrate and DEQ cannot confirm, based on record evidence, that the cumulative hydrologic impacts will not cause material damage to the hydrologic balance outside the permit area, DEQ is mandated to withhold approval of the permit application. *Id.* § 82-4-227(3). Here, DEQ failed repeatedly to apply the correct burden of proof, and relied on the absence of affirmative evidence or uncertainty in the existing evidence to justify its material damage determination. Among other instances, DEQ failed to apply the correct burden of proof and the record evidence did not support a negative material damage determination with respect to the following:

- a. The dewatering of intermittent portions of East Fork Armells Creek and other intermittent streams;
- The migration of polluted spoils water into un-mined portions of the
 Rosebud Coal Aquifer outside the permit area;
- c. Increased violations of water quality standards and rates of exceedances of effluent standards in discharges to surface waters following the advent of mining;
- d. Violations of water quality standards in the upper and lower segments of East Fork Armells Creek, which DEQ has previously attributed to operations of the Rosebud Mine;
- e. Violations of electrical conductivity standards in Rosebud Creek and tributaries to Rosebud Creek;

DEQ's failure to apply the correct burden of proof and its unsupported material damage determination were unlawful.

3

- 6. State and Federal law prohibit DEQ from approving a strip-mining application unless the application affirmatively demonstrates and DEQ confirms in writing based on record evidence that the cumulative hydrologic impacts will not cause material damage outside the permit area. *Id.* § 82-4-227(3)(a); 30 U.S.C. § 1260(b)(3); ARM 17.24.405(6)(c). Material damage includes violation of a water quality standard. § 82-4-203(31), MCA. Previous assessments of the upper and lower segments of East Fork Armells Creek prepared by DEQ pursuant to the Clean Water Act concluded that neither segment of the creek was meeting water quality standards, due in part to strip-mining operations at the Rosebud Strip Mine. DEQ's CHIA failed entirely to address these prior determinations by the agency. DEQ's complete failure to address its own determinations that the mine causing violations water quality standards was unlawful.
- 7. State and Federal law prohibit DEQ from approving a strip-mining application unless the application affirmatively demonstrates and DEQ confirms in writing based on record evidence that the cumulative hydrologic impacts will not cause material damage outside the permit area. § 82-4-227(3)(a), MCA; 30 U.S.C. § 1260(b)(3); ARM 17.24.405(6)(c). Material damage includes violation of a water quality standard. § 82-4-203(31), MCA. Designated uses of surface and groundwater in the cumulative impacts area include drinking water for livestock and wildlife. DEQ's CHIA applied a drinking water standard for livestock and wildlife for sulfate pollution that is not supported by record evidence and that is contrary to protective standards supported by peer reviewed science. DEQ's use of an outdated and unsupported sulfate standard that has been shown to cause harm to livestock was unlawful.

Respectfully submitted this 4th day of January, 2016,

Shiloh Hernandez

Western Environmental Law Center

103 Reeder's Alley Helena, Montana 59601

406.204.4861

hernandez@westernlaw.org

Counsel for Montana Environmental Information Center and Sierra Club